

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 DRY CREEK COALITION AND FUTUREWISE,

4
5 Petitioners,

6 v.

7
8 CLALLAM COUNTY,

9 Respondent.

Case No. 07-2-0018c

COMPLIANCE ORDER

10
11
12 This matter comes before the Board following the submittal of Clallam County's Compliance
13 Report.¹ The Compliance Report describes the actions Clallam County (the "County") took
14 in response to the Board's April 23, 2008 Final Decision and Order (FDO) and subsequent
15 Order on Reconsideration. In that FDO and Order on Reconsideration the Board found that
16 the County's Comprehensive Plan, maps and development regulations adopted under
17 Ordinance No. 827 and Resolution No. 77, 2007 were not compliant with the GMA as set
18 forth in the FDO and as described further below.
19

20
21 **I. SYNOPSIS OF DECISION**

22 In this Order the Board finds that the County may properly limit conditional uses in a
23 LAMIRD based upon "type, scale, size, use or intensity" without numerical standards as to
24 those dimensions. However, the appropriate inquiry is the character of the existing area "on
25 July 1, 1990" as provided by the Legislature, not "prior to or as of July 1, 1990" as the
26 County now provides.
27
28
29
30

31
32 ¹ Compliance Report on Partial Compliance and Requires for Partial Rescission of Invalidity, filed 10/29/08. In addition the County filed a First Progress Report on August 13, 2008 detailing its compliance efforts.

1 The Board finds that the following LAMIRDs, earlier found to be non-compliant, remain out
2 of compliance with the Growth Management Act (GMA): Dryke-Sherbourne, Laird's Corner
3 East, Deer Park, and Lake Farm. However, the County has brought its remaining LAMIRDs
4 into compliance.

5
6 The Board rescinds its determination of invalidity as to lands removed from both the
7 LAMIRD and R1/RW1 designations as they no longer substantially interfere with the goals of
8 the GMA.
9

10 The Board finds in this Order that the S(R-I) zoning designations previously present in the
11 Sequim UGA have been rezoned to S(R-II) and therefore the Board finds compliance for
12 that zone and that this zone no longer substantially interferes with the goals of the GMA.
13 As to the URH and URL zones, there is no basis to find that these zones substantially
14 interfere with the goals of the GMA within the Port Angeles and Sequim UGAs.
15
16

17 Finally, with the establishment of the Blyn LAMIRD, the County has brought its zoning for
18 this area into compliance with the GMA. However, the language "prior to or as of July 1,
19 1990", as found in CCC 33.15.040 for Rural Center zoning is not compliant with the GMA.
20

21 **II. PRELIMINARY MATTERS**

22 The County has moved to strike Dry Creeks' challenge to previously unchallenged portions
23 of LAMIRDs and development regulations.² The County argues that Dry Creek's arguments
24 in Sections I and IV of its briefing go beyond the scope of the issues to be considered during
25 a compliance proceeding.
26

27 The County has not specified the exact arguments that it claims are impermissible, and Dry
28 Creek has not responded to the motion. Therefore, the parties having failed to specify
29 exactly which arguments are at issue, the Board can merely state that, to the extent that Dry
30
31

32 ² County's Response to Objections at 6.

1 Creek makes arguments beyond the scope of the issues it brought in its original Petition for
2 Review, and on which the Board found non-compliance with the GMA, the Board will not
3 consider such arguments in this order.
4

5 The County has also moved to strike Dry Creek's inclusion of "Exhibit 1000" which is
6 composed of two aerial photographs of the Laird's LAMIRD area.³ These two exhibits
7 appear to be enlarged copies of Exhibits 414 and 415 previously submitted by the County.
8 Because Exhibit "1000" is already in the record in a different format, and does not present
9 new evidence but a clearer reproduction of exhibits in the Record, it will be allowed.
10

11 **III. PERTINENT PROCEDURAL HISTORY**

12 The Petitions for Review in this case were originally filed by Petitioner Futurewise on
13 October 3, 2007 and by Petitioner Dry Creek Coalition on October 26, 2007.
14

15 The matter originally came before the Board at a Hearing on the Merits of the Petition on
16 March 11, 2008.
17

18
19 On April 23, 2008 this Board issued its Final Decision and Order and, while finding that the
20 Petitioners had not carried their burden of proof with regard to certain issues, found the
21 County out of compliance with the Growth Management Act (GMA) in several regards,
22 including: the County's conditional use provisions allowed a potentially broader range of
23 uses within its LAMIRDs than those established as of July 1, 1990; a number of LAMIRDs
24 were found to be out of compliance, in whole or in part, with the GMA including SW
25 Carlsborg; Dungeness Village; East Anderson; Lotzgesell; Dryke/Sherbourne Road; Laird's
26 Corner; Deer Park; Lake Farm; Bear Creek; Whitcomb/Dimmel; Bogachiel Bridge; Three
27 Rivers; Quillayute River; Quillayute Prairie; Little Quillayute Prairie; O'Brien; Crescent
28 Beach; Lyre River; Bullman; and Snider. The Board also found that with such a large
29
30

31
32 ³ Id. at 7.
COMPLIANCE ORDER
Case No. 07-2-0018c
January 30, 2009
Page 3 of 45

1 percentage of the County's existing land use pattern at a parcel size of 4.81 acres and farms
2 within the County averaging 25 acres, the existing rural character of Clallam County is a
3 density of one dwelling unit per five acres (1du/5 acre). By authorizing densities that do not
4 reflect the existing landscape or economy of the area, the Board found the County had failed
5 to maintain the traditional rural lifestyles of the residents of Clallam County as required by
6 the GMA.
7

8 On the issue of urban densities, the Board concluded that the County's zoning districts
9 within the Sequim and Port Angeles UGAs which provide for a maximum residential density
10 of two dwelling units per acre (2 du/acre) violated the GMA. The failure to have urban
11 services available at the time of development, the presence of essential public facilities, and
12 the existence of sprawling, low-density development were found to not be sufficient
13 justification for such a non-urban density.
14

15
16 On the issue of the County's failure to provide for sewer service and other needed capital
17 facilities and services to the Carlsborg Urban Growth Area (UGA) in Section 20(C), and
18 failure to review and revise the Comprehensive Plan (CP) to plan for sewer service to the
19 Carlsborg UGA, the Board found that the County had not adopted a capital facilities plan
20 compliant with the provisions of the GMA for providing sewers. Because the County cannot
21 provide sewer service to enable urban development at the time of development, the
22 Carlsborg UGA was held to be non-compliant with the GMA. The Board found that the
23 County's CFP for police services did not comply with the GMA.
24
25

26 As applied to Blyn, the Board found that the provisions of CCC 31.03.270 regarding the
27 Rural Center zone did not comply with the GMA. Blyn, has not been designated as a UGA
28 or a LAMIRD and therefore the allowance of urban uses and more intense rural uses in this
29 area was clearly erroneous.
30
31
32

1 The Board found that the County's failure to require appropriate rural densities, the
2 allowance on non-urban densities in the Sequim and Port Angeles UGAs, the failure to have
3 in place an adequate Capital Facilities Plan for the Carlsborg UGA, and the allowance of
4 urban uses or more intense uses in Blyn, warranted a finding of invalidity.

5 On June 9, 2008 the Board issued an Order on Reconsideration in which the Board found
6 that the RLC and RNC limitations for existing commercial uses did not require consistency
7 with the character of the existing area and therefore did not comply with RCW
8 36.70A.070(5)(d)(i)(C) and RCW 36.70A.020(2).⁴
9

10
11 On November 7, 2008 the Board granted a motion to allow the County an additional 90 days
12 to achieve compliance on the issue of rural densities in Clallam County (setting a new
13 compliance date of January 23, 2009) and granted an additional one year to achieve
14 compliance regarding capital facilities planning for the Carlsborg non-municipal UGA (setting
15 a new compliance date of October 23, 2009).
16

17 On January 12, 2009, the Board held a compliance hearing in Sequim, Washington. Dry
18 Creek Coalition was represented by Mr. Gerald Steel. Futurewise was represented by Mr.
19 Robert Beattley. Mr. Doug Jensen represented the County and was accompanied by Ms.
20 Selinda Barkhuis, Planner for Clallam County. Mr. Sandy Mackie appeared on behalf of
21 participant Olympic Meadows Land Trust and North Pacific Land and Timber ("Olympic
22 Meadows"). All three Board members attended; James McNamara presided.
23
24

25 **IV. BURDEN OF PROOF**

26 After a board has entered a finding of non-compliance, the local jurisdiction is given a
27 period of time to adopt legislation to achieve compliance. RCW 36.70A.300(3)(b).

28 After the period for compliance has expired, the board is required to hold a hearing to
29 determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and
30

31
32 ⁴ Order on Reconsideration at 14.
COMPLIANCE ORDER
Case No. 07-2-0018c
January 30, 2009
Page 5 of 45

1 (2). For purposes of board review of the comprehensive plans and development regulations
2 adopted by local governments in response to a non-compliance finding, the presumption of
3 validity applies and the burden is on the challenger to establish that the new adoption is
4 clearly erroneous. RCW 36.70A.320(1), (2) and (3). If a finding of invalidity has been
5 entered, the burden is on the local jurisdiction to demonstrate that the ordinance or
6 resolution it has enacted in response to the finding of invalidity no longer substantially
7 interferes with the goals of the GMA. RCW 36.70A.320(4).
8

9
10 In order to find the City's action clearly erroneous, the Board must be "left with the firm
11 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
12 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
13

14 Within the framework of state goals and requirements, the boards must grant deference to
15 local governments in how they plan for growth:

16 In recognition of the broad range of discretion that may be exercised by counties and
17 cities in how they plan for growth, consistent with the requirements and goals of this
18 chapter, the legislature intends for the boards to grant deference to the counties and
19 cities in how they plan for growth, consistent with the requirements and goals of this
20 chapter. Local comprehensive plans and development regulations require counties
21 and cities to balance priorities and options for action in full consideration of local
22 circumstances. The legislature finds that while this chapter requires local planning to
23 take place within a framework of state goals and requirements, the ultimate burden
24 and responsibility for planning, harmonizing the planning goals of this chapter, and
25 implementing a county's or city's future rests with that community.
26 RCW 36.70A.3201 (in part).

27 In sum, the burden is on the Petitioner to overcome the presumption of validity and
28 demonstrate that any action taken by the County is clearly erroneous in light of the goals
29 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
30 Where not clearly erroneous and thus within the framework of state goals and requirements,
31 the planning choices of the local government must be granted deference.
32

1 In this case, the Board found that certain provisions, described in Section III above, were not
2 compliant with the GMA. The Board also found that the County's rural R2, RW2, R1 and
3 RW1 zones and urban URH, URL and S(R-1) zones substantially interfered with GMA goals
4 1 and 2. In addition, the Board found CCC 33.20 permitting urban uses in the Carlsborg
5 UGA substantially interfered with GMA goals 1, 2 and 12.⁵ Also, the Board found that the
6 allowance of urban uses in the Blyn UGA substantially interfered with GMA goal 1.
7

8 On remand, the County bears the burden of demonstrating that the provisions of these
9 zones and code sections no longer substantially interfere with these goals. As to the other
10 areas of non-compliance, the Board did not find that they substantially interfered with the
11 goals of the GMA, and therefore the burden of proving lack of compliance remains with the
12 Petitioner and Intervenors.
13

14 **V. ISSUES PRESENTED**

15 Whether the County has achieved compliance with the GMA with regard to those areas
16 found to be non-compliant in the Board's April 23, 2008, with the exception of those areas
17 for which an extension in the compliance period has been granted?
18

19 Has the County removed the risk of substantial interference with the goals of the GMA such
20 that the Board's earlier finding of invalidity regarding Blyn rezoning and Sequim and Port
21 Angeles UGA zoning and as to R1/RW zoning should be rescinded?
22
23

24 **VI. DISCUSSION**

25 The Board's April 23, 2008 Final Decision and Order remanded portions of the County's
26 Comprehensive Plan and development regulations to the County for compliance with the
27 GMA. On remand, the County took a number of steps to achieve compliance, specifically:
28
29
30
31

32 ⁵ Compliance on this issue has been extended.

1 the County adopted Resolution No. 88, 2008 and Ordinance No. 835 modifying the
2 boundaries of those LAMIRDs the Board found to be non-compliant.

3
4 In addition, with regard to the R1/RW designations, the County took action to clarify that the
5 lands with these designations are confined to LAMIRD zones within the various planning
6 regions identified by Futurewise and the R1/RW lands removed or excluded from the
7 noncompliant LAMIRDs were rezoned under compliant rural zoning.⁶ These excluded lands
8 were redesignated to rural zones, commercial forestry or public land zones.⁷
9

10 A. LAMIRDs (FDO Issues 1, 2, 3, 5, and 6)

11 The Board held in the FDO that uses allowed in LAMIRDs must be consistent with the areas
12 and uses that existed as of July 1, 1990. Because the County's conditional use provisions
13 allowed a potentially broader range of uses, the Board held they were not compliant with
14 RCW 36.70A.070(5)(d)(i)(C).⁸ In the Order on Reconsideration, the Board ordered the
15 County to comply with the size, scale, use and intensity requirements of this statute in the
16 RNC and RLC zones. DCC argues that the addition of the phrase "where uses of such type,
17 scale, size, or intensity already existed prior to or as of July 1, 1990" by the County to the
18 purpose statement of CCC 33.15.040(1) and (9), with similar changes to CCC 33.15.050
19 and 33.15.060 does not adequately direct the consistency requirement to the LAMIRD
20 area.⁹
21
22

23
24 The County responds that Dry Creek's objection to the County's use of the phrase
25 "character of the neighborhood" as opposed to "character of the existing area" in providing
26 for allowed and conditional uses is misplaced because the County interprets such language
27
28
29

30 ⁶ Compliance Report at 7.

31 ⁷ Id.

32 ⁸ FDO at 100.

⁹ DCC Objections at 9-10.

1 as being synonymous.¹⁰ The County argues that it has addressed the areas of
2 noncompliance found by the Board as it related to the breadth of possible uses or
3 conditional uses in the RLC and RNC zones by ensuring that such uses must now be
4 considered in light of the character of the area as of July 1, 1990.

5
6 The Board notes that the County has added provisions to CCC 33.15.050 et seq. to require
7 that the uses be “of such type, scale, size or intensity [as] already existed prior to or as of
8 July 1, 1990. Conditional uses must now meet the character of the neighborhood “as of July
9 1, 1990” and there is a performance standard that “Allowed and conditional uses must be
10 similar to the use, scale, size, or intensity of the uses that existed in the area prior to or as of
11 July 1, 1990.” Similarly, heights are limited to those that existed prior to or as of July 1,
12 1990 except as necessary to comply with federal and State pollution control requirements.
13 The County’s conditional use process in CCC 33.27 provides that the County Hearing
14 Examiner may approve an application for a conditional use only if:
15
16

17 (a) The proposed action is consistent with the spirit and intent of the Clallam
18 County Comprehensive Plan.

19 (b) The proposed action is consistent with this title.
20

21 (c) The proposed action is consistent with land uses within the zoning district
22 in which it is located and in the vicinity of the subject property.

23 (d) The proposed action will have no unreasonable adverse impact on the
24 surrounding land uses which cannot be mitigated through the application of
25 reasonable conditions.¹¹

26 Such provisions necessarily will require that, once the County has adopted complaint
27 regulations, only conditional uses that are consistent with the existing area as of July 1,
28 1990 may be approved.
29

30
31 ¹⁰ County’s Response to Objections at 35.

32 ¹¹ CCC 33.27.040.

1 The Board notes that the use of the phrase “the character of the neighborhood” is not new
2 language in the Clallam County Code, and such language was not the subject of a finding of
3 non-compliance in the FDO. In asserting that the Board earlier found such language to be
4 noncompliant, Dry Creek misreads the FDO. Dry Creek states that “A reason for finding
5 noncompliance for the conditional uses was that it is not the character of the neighborhood
6 that must be maintained but rather it is the character of the existing area in the LAMIRD.”¹²
7 While the Board found that the County is entitled to allow uses within LAMIRDs consistent
8 with those of the “existing areas”, the Board was merely using the language found in RCW
9 36.70.070(5)(d). There was no discussion or finding on the use of the character of the
10 “existing areas” vs. “neighborhood”. The Board focused on the County’s failure to include
11 the July 1, 1990 limitation on uses required by statute.
12

13
14 Petitioners have failed to demonstrate that the use of the phrase “character of the
15 neighborhood” as opposed to “character of the existing area” in providing for allowed and
16 conditional uses is clearly erroneous.
17

18 However, the County has failed to address the area of non-compliance identified by the
19 Board --- that the County comply with the size, scale, use and intensity requirements of
20 RCW 36.70A.070(5)(d)(i)(C) in the RNC and RLC zones and not allow a broader range of
21 uses than existed “as of July 1, 1990.” The phrase “the uses that existed in the area *prior to*
22 or as of July 1, 1990” in describing the reference point for allowed and conditional uses is
23 not consistent with RCW 36.70A.070(5)(d)(v) which provides that “For purposes of (d) of this
24 subsection, an existing area or existing use is one that was in existence: (A) On July 1,
25 1990, in a county that was initially required to plan under all of the provisions of this
26 chapter”. The Legislature in selecting July 1, 1990 used a definite point in time to use as a
27 reference point for counties in defining the extent of a LAMIRD. The County explained at
28 oral argument that the intent of the phase “prior to or as of July 1, 1990” was to recognize
29
30
31

32 ¹² DCC Objections at 9.
COMPLIANCE ORDER
Case No. 07-2-0018c
January 30, 2009
Page 10 of 45

1 that uses that existed before that date need not still have been in operation “as of July 1,
2 1990” to qualify the area as a LAMIRD. The phrase “prior to or as of July 1, 1990” would
3 allow consideration of past uses that were not only not in operation on July 1, 1990, but of
4 which there was no remaining evidence. Under the County’s current phrasing, a
5 commercial use that was in existence prior to July 1, 1990 but which subsequently was
6 removed or destroyed leaving no remaining “built environment” would still qualify the area as
7 a LAMIRD. This is inconsistent with the language of RCW 36.70A.070(5)(d)(v) and is
8 clearly erroneous. While the County may properly limit conditional uses in a LAMIRD based
9 upon “type, scale, size, use or intensity” without numerical standards as to those
10 dimensions, the appropriate inquiry is the character of the existing area “on July 1, 1990” as
11 provided by the Legislature, not “prior to or as of July 1, 1990” as the County now provides.
12
13

14 B. Logical Outer Boundaries (Issue 10)

15 The FDO identified 20 LAMIRDs that did not satisfy the statutory criteria. In response, the
16 County adopted a public participation plan, and conducted multiple workshops and two
17 planning commission hearings before adopting Resolution No. 88, 2008 and Ordinance No.
18 835.¹³
19

20
21 The County points out that Futurewise had earlier supported the boundary revisions for
22 several of the LAMIRDs in its correspondence with the County, and therefore, lacks
23 standing to raise an objection to those LAMIRDs at this point of the proceedings.¹⁴
24

25 In order to determine whether a petitioner has standing to raise an issue in a Petition for
26 Review, the Board reviews the issue as set forth in the Prehearing Order, the Petition for
27 Review, the briefing, and the Record to ascertain the nature of the petitioner’s participation.
28 If the petitioner’s participation is reasonably related to a petitioner’s issues as presented to
29
30

31 ¹³ County Compliance Report at 6.

32 ¹⁴ County Response to Objections at 25.

1 the Board, then the petitioner has standing to raise and argue that issue. If petitioner's
2 participation is not reasonably related to petitioner's issue as presented to the Board, then
3 the petitioner will not have standing to raise and argue that issue.
4

5 Standing requirements are different in a compliance proceedings. RCW 36.70A.330(2)
6 states, in pertinent part:

7 A person with standing to challenge the legislation enacted in response to the board's
8 final order may participate in the hearing along with the petitioner and the state
9 agency, county, or city.

10 Thus, to participate in a compliance proceeding, a party must have raised the issue and
11 have standing in the original proceedings before the Board, or have participated in the
12 compliance proceedings on the issue to which they are objecting.
13

14 Here, Futurewise raised challenges to certain LAMIRD designations in its Petition for
15 Review and participated on that issue in the compliance proceedings, so has standing to
16 challenge those designations in this compliance proceeding on both counts.
17

18 19 1. SW Carlsborg

20 In briefing for the HOM, Futurewise contended that the SW Carlborg LAMIRD did not
21 qualify for this designation because it was undeveloped in 1990 or entirely consisted of uses
22 and lot sizes inconsistent with LAMIRD designation under RCW 36.70A.070(5)(d). The
23 Board found that the LAMIRD did not comply with the GMA designation criteria.¹⁵ In
24 response the County down-zoned the entire LAMIRD to R5 zoning.¹⁶ As a result of this
25 action, Futurewise has no objection to a finding of compliance for this area.¹⁷ The Board
26 finds that this action by the County brings this LAMIRD into compliance with the GMA.
27

28 29 2. Dungeness Village

30
31 ¹⁵ FDO at 32.

¹⁶ Index at #129.

32 ¹⁷ Futurewise Objections at 7.

1 In the prior proceedings Futurewise alleged that the Dungeness Village LAMIRD had
2 qualifying development in 1990 but was given overly broad boundaries, including land that
3 was undeveloped or used for rural and natural resource uses in 1990. In our FDO the Board
4 found “because the County included undeveloped but platted/subdivided lands within its
5 definition of the existing, built environment and the LOB for this LAMIRD [it] creates an
6 irregular boundary that does not adhere to a defined physical boundary . . . [and] does not
7 comply with the designation criteria set forth in the GMA”.¹⁸ In response, the County adopted
8 a compliance strategy of adjusting the LOB to exclude and downzone certain properties.¹⁹
9 Futurewise argues that while the County has de-designated several parcels in the northeast
10 section of the LAMIRD, significant excess land is included in the South and Southwest
11 portion of the LAMIRD which remains in violation because the LOB for this LAMIRD
12 remained irregular and that the County extended the LAMIRD southward, across a
13 waterway that appears to define the 1990 boundary.²⁰ Futurewise submits a revised aerial
14 photo with its recommended LAMIRD boundary at Index No. 148.
15
16

17 In reply, the County argues that Futurewise merely articulates its preference and fails to
18 factually substantiate why its choice of a LOB overrides the County’s decision. The County
19 points out that it retained the south parcels in the LAMIRD because the largest of these
20 parcels is 2.75 acres and, were they to be rezoned R5, this would create a non-conforming
21 patchwork of parcels.²¹
22
23

24 In *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn. App. 378, 391, 166 P.3d 748 (2007) the
25 Court of Appeals noted: “In general, LAMIRDs allow continuation of greater densities than
26 are usually permitted in rural area, such as commercial areas at crossroads, recreational
27 areas, and transportation corridors.” As the County points out, it drew the LOB in the
28
29

30 ¹⁸ FDO at 33.

31 ¹⁹ Index at #129.

32 ²⁰ Futurewise Objections at 7.

²¹ County Response at 12.

1 southern portion of this LAMIRD around a historic built environment that developed around
2 the intersections of three major, pre-1990's public roads: Sequim Dungeness Way, Towne
3 Road, and E. Anderson Road.²² Furthermore, as the southern portion contained
4 development at lower densities than other portions of the LAMIRD, the County rezoned this
5 portion of the LAMIRD from RV to RV2. While we reject the County's rationale that would
6 consider the creation of non-conforming lots as justification for retaining otherwise
7 undeveloped land within a LAMIRD, the County demonstrated that it also relied on the
8 presence of homes dating from the 1800's, early 1900s and mid-1900's as a basis for the
9 LOB.²³ Therefore, we find that the County's decision to include this area within the LAMIRD
10 was a reasonable choice and not clearly erroneous. Therefore, the Board finds the
11 Dungeness Village LAMIRD is now compliant with the GMA.
12

13 14 3. East Anderson

15 In the FDO the Board held that "because the County included undeveloped but
16 platted/subdivided lands south of East Anderson Road within its definition of the existing,
17 built environment and the LOB for this LAMIRD creates an irregular boundary that does not
18 adhere to a defined physical boundary, the Board finds that the East Anderson Road
19 LAMIRD does not comply with the designation criteria set forth in the GMA."²⁴ In response,
20 the County excluded and down-zoned to R5 the portion of the LAMIRD south of East
21 Anderson Road and the parcels north of East Anderson Road.²⁵ As a result of this action,
22 Futurewise has no objection to a finding of compliance for this area.²⁶ The Board concurs
23 that this action by the County brings this LAMIRD into compliance with the GMA.
24
25

26 4. Lotzgesell

27
28

29 ²²Id.

30 ²³ Record at 595.

31 ²⁴ FDO at 34.

32 ²⁵ Index at #129.

²⁶ Futurewise Objection at 8.

1 With regard to the Lotsgesell LAMIRD, the Board found that the County "established a LOB
2 that appears to connect to areas that could serve as distinct LAMIRDs, thereby preserving
3 the rural character of the larger parcels that bisect the area. Because of this, the Board
4 finds that the Lotsgesell Road LAMIRD does not comply with the designation criteria set
5 forth in the GMA."²⁷ In response the County adjusted the LOBs to form two smaller
6 LAMIRDs both of which remain zoned R1. As a result this LAMIRD became the Dungeness
7 Bay LAMIRD to the northeast and Kitchen Dick LAMIRD to the Southwest. Futurewise does
8 not object to a finding of compliance for this revised LAMIRD.²⁸ The Board concurs that this
9 action by the County brings this LAMIRD into compliance with the GMA.
10

11 5. Dryke-Sherbourne

12 With regard to the Dryke-Sherbourne LAMIRD this Board found that the boundaries were
13 established based on pre-existing zoning as opposed to the 1990 existing, built
14 environment. The Board found that the County included large parcels that did not provide
15 for a LOB that follows a physical boundary and created irregular borders for the LAMIRD.²⁹
16 With regard to this LAMIRD that is divided into East and West portions, some of the vacant
17 land from the Western portion of the LAMIRD has been deleted. However, there is no
18 evidence in the record to demonstrate that the retained area to the southeast of the eastern
19 portion of this LAMIRD contained qualifying development in 1990. The 1990 aerial
20 photograph shows no evidence of development. The County staff report stated, as to
21 Dryke-west: "The LOB should retain the south half of the eastern parcel. This area is being
22 used for commercial storage consistent with its existing commercial zoning."³⁰ The present
23 use of the property is of no relevance in establishing the LOB. In the absence of any
24 evidence of 1990 qualifying development, the inclusion of this portion of Dryke-West was
25 clearly erroneous.
26
27
28

29
30 ²⁷ FDO at 35.

31 ²⁸ Futurewise Objections at 8.

32 ²⁹ FDO at 36.

³⁰ Ex. 129 at 604.

1 However, with regard to the Eastern portion, Futurewise notes that the entire eastern half of
2 the LAMIRD south of Highway 101 had no development in 1990 and still has none across a
3 huge swath of the area.³¹ Futurewise argues that this LAMIRD has been expanded to
4 include more area that was not developed in 1990, specifically 16.21 acres of vacant land
5 east of Pierson Road and South of Highway 101. Futurewise argues that including large
6 lots within the LOB of the LAMIRD to connect the developed areas into one LAMIRD
7 violates the GMA.
8
9

10 In response, the County argues that the portion of the LAMIRD south of Highway 101 is not,
11 as Futurewise characterizes it, a “huge swath of [undeveloped] area” but four parcels
12 comprising 16.21 acres, with three of those parcels being smaller than 5 acres. The County
13 notes that the area is bounded by Highway 101 to the north, a septic system business to the
14 east, an RV park to the south and a lumberyard to the south. It states that with R5 zoning,
15 three of the four parcels would be non-conforming.
16
17

18 As to the eastern section of the LAMIRD, the County produced evidence that a 7.33 acre
19 parcel now operated as an RV park has had commercial activity since 1988. A 6 acre
20 parcel to the east, now operated as Peninsula Septic Tanks, has been the site of
21 commercial activity since the 1970s. Of the four parcels between the RC Park and
22 Highway 101, the site is surrounded on three sides by commercial uses and will be further
23 reduced by the future widening of Highway 101. Under these facts, the County’s LOB for
24 the eastern portion of the LAMIRD is not clearly erroneous.
25
26

27 6. Laird’s Corner - **West**

28 In our FDO, the Board found that:

29 Based on the 1990 aerial photograph, lands west of Highway 112 which
30 bisects this section of the LAMIRD were forested in 1990 and areas north of
31

32 ³¹ Futurewise Objections at 9.
COMPLIANCE ORDER
Case No. 07-2-0018c
January 30, 2009
Page 16 of 45

1 Granite Road appear to have both forest and grasslands. With the exception of
2 the small pocket of development bordered by Highways 101 and 112, Laird
3 and Granite Roads, all other area of Laird's West do not satisfy GMA criteria in
4 regard to existing, built environment. In addition, given the defining features of
5 the roadways surrounding this section of the LAMIRD, the Board questions the
physical boundaries selected by the County to delineate the LOB.³²

6 In response, the County maintained the northern portion of the LOB, adjusted the west LOB
7 to consist of SR 112, Hwy 101, Lairds Road, Power Plant Road and the west boundary of
8 the old Clallam Log Yard site.
9

10 DCC requests that the West portion of this LAMIRD be found in continued non-compliance
11 because the County continues to include an excessive amount of outfill in these LAMIRDs,
12 in violation of RCW 36.70A.070(5)(d)(i).³³
13

14 DCC argues that it is clearly erroneous for the County to have retained the portion of the
15 LAMIRD north of Granite Road because Ex. 1000 shows that there was no intensive rural
16 development in this area as of July 1, 1990. DCC also claims that this Exhibit shows that it
17 was error to not exclude Parcel 11 as there was no intensive rural development of this area
18 either at that time. DCC argues that Highway 112 is not a logical outer boundary for the
19 LAMIRD as this road did not exist in 1990.
20
21

22 Futurewise also argues that this area is noncompliant. It notes that the new boundaries of
23 Laird's Corner West share almost no boundary with the previously designated boundaries. It
24 argues that the inclusion of an area adjacent to the log yard in the LAMIRD is inconsistent
25 with the County's responsibility to "minimize and contain" that existing more intense use,
26 and that a majority of the designated area had nothing built on it in 1990.³⁴
27
28
29

30
31 ³² FDO at 36-37.

32 ³³ DCC's Objections, at 3.

³⁴ Futurewise Objections at 11.

1 With regard to Laird's Corner West, the County argues that, on remand, the County staff
2 reviewed the history of the built environment in this area, as evidenced by aerial
3 photographs procured for compliance review, and adjusted the LOB to consist of SR 112,
4 Hwy 101, Laird's Road, Power Plant Road and the west boundary of the old Clallam Log
5 Yard site.³⁵
6

7 Addressing the Clallam Log Yard, the County asserts that by July 1, 1990
8 industrial/commercial uses had been established in this area and that it was the location of
9 a mill and log yard since before 1974. The County notes that, though the site was idled
10 during a downturn in the demand for timber products, the built environment remained a
11 constant.³⁶
12

13
14 The County argues that three small parcels (a vacant .84 acre parcel; a fire station on .43
15 acres; a PUD station on .51 acres) should be included within the LAMIRD as part of the LOB
16 of Power Plant Road.
17

18 The County asserts that the area between the large Clallam Log Yard and Lairds Road
19 contains a parcel where a store has been operating since 1980 and a parcel that has been
20 the location of the Junction Tavern for "many years", and at least as far back as July 1,
21 1990.
22

23 The Board concurs that the record demonstrates that the Clallam Log Yard was established
24 as of July 1, 1990 as an industrial/commercial use in this area.³⁷ Contrary to DCCs'
25 assertion³⁸ there is no evidence that prior use of the property north of Granite Road had
26 been abandoned as of the date of the 1990 aerial photograph. In fact, whether a prior use
27 has been abandoned is not the relevant inquiry in delineating a LAMIRD, but instead one
28
29

30 ³⁵ County Response to Objections at 18.

31 ³⁶ Id. at 19.

32 ³⁷ Record at Ex. 377, p. 1957

³⁸ DCC Objections at 5.

1 must look to evidence of the built environment. Such evidence is present in the 1990
2 photograph. While the record regarding the Clallam Log Yard built environment might not
3 be sufficient to qualify that area for inclusion in the LAMIRD, the existence of the fire station
4 and PUD structures to the south of the log yard site warrant inclusion of the area.
5 With regard to Parcel 11 (in the southwestern portion of this LAMIRD), there is little evidence
6 of the built environment on this parcel as of July 1, 1990 aside from a single family home.
7 However, the Board does not find that the County's rationale for using Highway 112 as part
8 of the LOB and including this parcel as infill was clearly erroneous.
9

10 **East**

11 With regard to the eastern portion of Laird's Corner LAMIRD, the Board previously held:

12 As for Laird's East, Dry Creek notes that parcels east of Dry Creek Road had
13 no development as of 1990 with development only existing on the central
14 portion of the area west of Dry Creek Road. Although unclear, the 1990 aerial
15 photographs appear to support this assertion with nothing in the County's
16 analysis clearly denoting why Laird's East contains several large undeveloped
17 parcels or why, with the exception of the highway, the boundary is drawn as it
18 is and what justification is there for the irregular nature of the boundary.³⁹

19 In response the County maintained the LOB, but strengthened its record to support it.⁴⁰
20

21 DCC argues this area remains non-compliant because, while there was a log yard
22 development in the middle of the LAMIRD in 1990, there was no development on large
23 parcels to the east and west. DCC acknowledges that the most easterly parcels of this
24 LAMIRD did have development in July of 1990, and are suitable for inclusion in the LOB.
25

26 DCC argues that Parcel 1 (aka the Peninsula Timber Short Plat), as shown on Ex. 1000 and
27 Record 611 show no development. As to Parcel 2 (aka the Merrill & Ring Log Yard), the
28
29
30

31 ³⁹ FDO at 36-37.

32 ⁴⁰ Record at 608.

1 1990 aerial photograph shows a small log yard in the SW 5 acres of the approximately 40
2 acre parcel.⁴¹ DCC argues that this is not a more intensive rural use.

3
4 The County argues that its staff reviewed the history of the built environment in this area. It
5 found that the southwest portion of the region contained industrial/commercial uses by July
6 1, 1990.⁴² The County argues that the commercial forestry company of Merrill & Ring
7 maintained saw facilities, buildings and areas for log storage.⁴³

8
9 The County also claims the parcels east of S. Dry Creek Road, known as the Corey & Sons
10 Lumber Mill contained existing shop buildings at the time of a 1986 permit application and
11 evidence of mill activities in a 1990 aerial photograph.⁴⁴

12
13 Finally, the County argues that the “Allen property” to the north of the Interfor Pacific mill
14 was operated as a wrecking yard from August 1978 to November 1994.

15
16 As noted above, the Board’s findings in the FDO for Laird’s LAMIRD – East were largely
17 based on the lack of any evidence in the record to support the LOB for this area. The
18 County Planning Commission reviewed additional aerial photographs which show logging
19 operations on the Corey and Sons Lumber Mill and the Merrill & Ring Log Yard.⁴⁵ These
20 photographs demonstrate that commercial and industrial uses had been established on the
21 property as of 1990 including office buildings, saw facilities, buildings and log storage on the
22 Merrill & Ring properties, and shop buildings and mill facilities on the Corey and Sons
23 Lumber Mill site. Further, the County has shown that the Allen property, in the northeastern
24 corner was operated as an auto wrecking yard from 1978 to 1994.
25
26
27

28
29 _____
30 ⁴¹ DCC’s Objections at 7.

31 ⁴² County Response at 15.

32 ⁴³ Id.

⁴⁴ Id. at 16.

⁴⁵ Record at 611, 616, 617, 618, 619, 620.

1 However, the evidence presented by the County does not support the inclusion of the
2 Peninsula Timber Company property within the LOB. While the County is correct that the
3 site shows some evidence of past use for log storage, there is no evidence of the "built
4 environment. Its inclusion within the LOB does not meet the criteria of the GMA and is
5 clearly erroneous.
6

7 Furthermore, the County's basis for including the ten acre parcel in the northwest corner of
8 the Merrill & Ring site is not supported by evidence of the 1990 built environment. The
9 County's sole basis for including this parcel within the LOB is that "While appearing empty, .
10 . [it] has been consistently included and transferred as part of this site's ownership . . . [and
11 has been] considered as part of the mill site."⁴⁶ In the absence of any evidence that this ten
12 acre parcel was characterized by the built environment on July 1, 1990 , or any showing that
13 its inclusion met the consideration for drawing a LOB set forth in RCW 36.70A.070 (d)(iv), its
14 inclusion within the LOB was clearly erroneous. With the exception of this 10 acre portion of
15 the Merrill & Ring site, and the Peninsula Timber Company property, the County has
16 demonstrated that this portion of Lairds' LAMIRD is compliant with the GMA.
17
18

19 7. Deer Park 20

21 In the FDO, the Board found that the Deer Park LAMIRD included a gravel pit within its
22 northernmost area which, while intensive in nature, did not merit inclusion within a
23 LAMIRD.⁴⁷ The 1990 aerial photograph denoted development within the area of the gravel
24 pit and along Highway 101, which bisects the LAMIRD. The Board found that all other areas
25 were not developed but appear to have been included within the area because these areas
26 had been zoned Commercial. Inclusion of land simply based on pre-existing zoning does
27 not comply with the GMA's criteria in regard to the existing development as of 1990, the
28
29
30

31 ⁴⁶ Record at 609.

32 ⁴⁷ FDO at 37-38.

1 Board concluded. The County also provided no basis for inclusion of land west of Deer
2 Creek Road.

3
4 DCC argues that the County erroneously considered the character of this area “prior to or as
5 of July 1, 1990” instead of “on July 1, 1990”, as provided in RCW 36.70A.070(5)(d)(v).⁴⁸

6 DCC argues that the more intensive “pre-1990” development was not present on July 1,
7 1990. However, DCC has not demonstrated that the County relied on this standard in
8 establishing the LOB. Instead, the evidence reflects that the County decision was based on
9 infrastructure, utilities and other aspects of the built environment that were in place “as of
10 July 1990.”
11

12 Futurewise objects on the basis that the LAMIRD has been given overly broad boundaries,
13 including land that was undeveloped or used for rural and natural resource uses in 1990.⁴⁹
14 In particular, Futurewise argues that the area designated as “Gravel Mining Operations”⁵⁰
15 should be excluded as such a use does not qualify as part of the July 1, 1990 “built
16 environment”.
17
18

19 In response, the County argues that on remand the County redrew the LOB to exclude
20 several of the larger parcels north and south of Highway 101. In particular, North of Highway
21 101 the County points to the Rains Cedar Park mining site, which the County indicates was
22 removed from the LAMIRD.⁵¹
23

24 South of Highway 101 the County points to parcels west of Old Deer Park Road that were
25 part of a previous mining operation, which include a home and a PUD station. The County
26
27
28

29
30 ⁴⁸ DCC’s Objections, at 2.

31 ⁴⁹ Futurewise Objections at 11.

⁵⁰ Ex. 129, page 631.

32 ⁵¹ County Response to Objections at 23. This was also confirmed by the County at the Compliance Hearing.

1 argues that this area included major power lines, the PUD sub-station and power facility, a
2 theatre and steakhouse.⁵²

3
4 East of Old Deer Park Road and north of the section line, the County argues that the
5 properties are either commercially developed, or commercial development is pending. The
6 County concedes that only the movie theater predates 1990, but asserts that the 1990 photo
7 shows road infrastructure.

8
9 With regard to the Deer Park Commercial Center, the County states that this area included a
10 7-lot short plat from 1999 entitled "Deer Park Commercial Center". The County asserts that
11 it is served by a commercial road network. The County argues that to exclude these from
12 the LAMIRD and to rezone them to rural residential designations would create a significant
13 area of non-conforming commercial uses, and that this should be avoided.⁵³ The Board
14 does not agree that the avoidance of non-conformities is the appropriate standard in
15 establishing the LOB, and this is not the standard provided in the GMA. However,
16 Petitioners have not demonstrated that, in relation to the remainder of the LAMIRD, its
17 inclusion was clearly erroneous and not necessary to maintain a LOB.
18
19

20 With regard to the SE corner of the LAMIRD, that property referred to in the briefing as NP-1
21 and NP-2, the County excluded most of NP-2, and included NP-1. As pointed out by
22 Participant Olympic Meadows, the record reflects that Easy Street, bordering NP-1 on the
23 west, had full infrastructure in 1990 including an 8 inch water main, fire hydrants, and
24 commercial power.⁵⁴ We find that this level of development supported the inclusion of NP-1
25 within the LOB. Furthermore, Petitioners pointed to no evidence in the record to overcome
26 the presumption of validity and demonstrate that this LOB was clearly erroneous.
27
28
29

30
31 ⁵² County Response to Objections at 23-24.

32 ⁵³ Id. at 24.

⁵⁴ Olympic Meadows' Response at 18.

1 However, with regard to the Port Angeles Gun Club property, there is no evidence of 1990
2 Built environment nor other justification for extending the LOB across Highway 101 to
3 include this property. To the contrary, with the removal of the other properties north of
4 Highway 101 from this LAMIRD, Highway 101 would appear to form a more likely northern
5 boundary for the LAMIRD. The County's rationale – that shooting ranges are a Prohibited
6 use in a rural residential zone – may be justification for a zone change, but does not provide
7 support for inclusion within a LAMIRD. Its inclusion within the LOB was clearly erroneous.
8

9 8. Lake Farm

10 In the FDO the Board found that "because the County utilized a definition of existing
11 development that does not reflect 1990 built environment and creates, in some areas,
12 irregular boundaries that are not supported by the record, the Board finds that the Lake
13 Farm LAMIRD does not comply with the designation criteria set forth in the GMA."⁵⁵
14

15
16 Futurewise contends that a large Western portion of this LAMIRD was undeveloped in both
17 1990 and 2005, and that this has not changed. Yet the LAMIRD continues to include much
18 of this territory.⁵⁶
19

20 In response, the County notes that it redrew the LOB to exclude platted but undeveloped
21 parcels from the LAMIRD, removing them from the northwest and southeast corners. While
22 this is true, the County left in large areas in the western portion of the Lake Farm LAMIRD
23 which the 1990 aerial photograph shows was undeveloped at that time. At the Compliance
24 hearing, the County explained that this area was included on the basis of cleared home lots,
25 but acknowledged that no other infrastructure aside from roads was in place in 1990. This
26 use of cleared lots, without any other infrastructure, is not consistent with the RCW
27 36.70A.070(5)(d)(iv) requirement to establish the LOB based on areas that are clearly
28
29
30

31 ⁵⁵ FDO at 38.

32 ⁵⁶ Futurewise Objections at 13.

1 identifiable and delineated predominantly by the built environment. As a result, the Board
2 finds that the Lake Farm LAMIRD remains non-compliant.

3 4 9. Bear Creek

5 With regard to the Bear Creek LAMIRD, the Board found:

6 "the eastern and southwestern portions of the bear Creek LAMIRD clearly
7 contained lands that are not delineated predominately by the built environment.
8 While the County is allowed to address 'physical boundaries such as bodies of
9 water, streets and highways, and landforms and contours', it appears the
10 County went well beyond using physical boundaries in an attempt to include
11 additional undeveloped land."⁵⁷

12 The County adopted a compliance strategy of "adjusting the LOB to exclude and downzone
13 certain properties".⁵⁸ The County shrunk the LAMIRD back below Highway 101 and on this
14 basis Futurewise does not object to a finding of compliance with this designation. The
15 Board concurs that this action by the County brings this LAMIRD into compliance with the
16 GMA.

17 18 10. Whitcomb/Dimmel

19 With regard to this LAMIRD, the Board found that" in light of the 1990 aerial photograph,
20 and in the absence of any justification from the County that DW-west was characterized by
21 the built environment in 1990, we find that that portion of the LAMIRD was improperly
22 included."⁵⁹ As elsewhere, the County adopted a compliance strategy of adjusting the LOB
23 and downzoning the excluded portions. As a result Futurewise has no objections to a
24 finding of compliance regarding this area.⁶⁰ The Board concurs that this action by the
25 County brings this LAMIRD into compliance with the GMA.

26 27 28 11. Bogachiel Bridge

29
30 ⁵⁷ FDO at 39.

31 ⁵⁸ Index #129, at 30.

32 ⁵⁹ FDO and 41.

⁶⁰ Futurewise Objections at 14.

1 In the FDO the Board found that "Lands to the far west and in the southeast quarter of this
2 LAMIRD showed no evidence of the built environment existing in 1990"⁶¹ Futurewise
3 objects to a finding of compliance regarding this LAMIRD on the contention that despite
4 reducing the area covered by the LAMIRD, portions west of the Meridian placed over Hollow
5 Road and extended to the edges of the 1990 Map show a lack of any built environment.
6 Therefore, Futurewise contends the LAMIRD has been given overly broad boundaries,
7 including lands undeveloped or used for rural and natural resources purposes in 1990.⁶²
8 In response, the County notes that Futurewise had supported the Bogachiel Bridge LAMIRD
9 in its written submissions to the County, and therefore lacks standing to object, for the first
10 time, in its filed objection briefing.⁶³ As noted above, the Board concludes that this prior
11 statement of support from Futurewise does not prevent its standing.
12

13
14 With regard to Futurewise objections to the LOB, the County points out that the new LOB
15 substantially corresponds to the boundary suggested by Futurewise at the HOM.⁶⁴ The
16 County has shown that the LOB proposed by Futurewise during earlier proceedings in this
17 case is substantially the same as the presently adopted LOB.⁶⁵ According to the County, the
18 present LOB was redrawn to exclude parcels west of the historic commercial strip west of
19 Highway 101.
20

21
22 In reviewing the record and photographs, it appears to the Board that the County has
23 removed those areas from this LAMIRD previously found to be non-compliant. Futurewise
24 has not carried its burden to demonstrate the present LOB is clearly erroneous.
25

26 12. Three Rivers

27
28

29 ⁶¹ FDO at 42.

30 ⁶² Futurewise Objections at 14.

31 ⁶³ County Response at 27.

32 ⁶⁴ Id. at 28-29.

⁶⁵ See, County Response at 28-29.

1 In the FDO the Board noted that aside from three tourist commercial uses at the north part
2 of the intersection of La Push and Mora Road, and the Quillayute River Resort, the balance
3 of the land is either vacant, large lot residential development, or a Washington State
4 Department of Fish and Wildlife park and boat launch and does not qualify for inclusion in
5 the LAMIRD.⁶⁶ In response, the County adjusted the LOB and rezoned excluded areas.⁶⁷
6 As a result, Futurewise has no objection to a finding of compliance.⁶⁸ The Board concurs
7 that this action by the County brings this LAMIRD into compliance with the GMA.
8

9 13. Quillayute River

10 In the FDO the Board found that "aside from the area to the east of Richwine Road, which
11 appears to have been clearly identifiable and contained and possesses a logical boundary
12 delineated predominately by the built environment, the remainder of this area does not
13 qualify as a LAMIRD."⁶⁹ This LAMIRD has been reduced substantially in size. The Board
14 finds that this action by the County brings this LAMIRD into compliance with the GMA
15
16

17 14. Quillayute Prairie

18 In the Board's FDO we found that a 1990 aerial photograph of this area did not demonstrate
19 that it was an area delineated predominately by the built environment.⁷⁰ The County chose
20 to delete this LAMIRD and Futurewise has no objection to a finding of compliance in this
21 regard. The Board concurs that this action by the County brings this LAMIRD into
22 compliance with the GMA.
23
24

25 15. Little Quillayute Prairie

26
27
28

29 ⁶⁶ FDO at 43.

30 ⁶⁷ Index #129 at 33.

31 ⁶⁸ Futurewise Objections at 15.

32 ⁶⁹ FDO at 44.

⁷⁰ FDO at 45.

1 It was noted in the FDO for this LAMIRD that the 1990 aerial photograph showed little
2 development.⁷¹ The County adopted a compliance strategy of downzoning the area to RW5
3 zoning. As a result Futurewise has no objection to a finding of compliance regarding this
4 area.⁷² The Board concurs that this action by the County brings this LAMIRD into
5 compliance with the GMA.
6

7 16. O'Brien

8 The FDO found that the O'Brien LAMIRD contained large areas of outfill and that the built
9 environment did not predominate.⁷³ In response, the County retained the KOA campground
10 at the LAMIRDs' west end. The County noted that this area was a campground area from
11 1972 to the early 1990's with trees on the 1990 aerial photo obscuring the then-existing tent
12 sites.⁷⁴ The commercial uses north of Highway 101 were retained and the northern LOB
13 was adjusted to include the state patrol office which the County asserts was in use well
14 before 1990.⁷⁵
15
16

17 DCC argues that the County erroneously considered the character of this area "prior to or as
18 of July 1, 1990" instead of "on July 1, 1990", as provided in RCW 36.70A.070(5)(d)(v).⁷⁶
19 DCC argues that the more intensive "pre-1990" development was not present on July 1,
20 1990. As noted elsewhere, the County's response to this objection is that its treatment of
21 the July 1, 1990 built environment is consistent with the GMA and prior Board decisions.
22
23

24 Futurewise, on the other hand, notes that the County adjusted the LOB and rezoned the
25 excluded portions, and as a result it does not have an objection to a finding of compliance.⁷⁷
26
27

28 ⁷¹ Id. at 46.

29 ⁷² Futurewise Objections at 16.

30 ⁷³ FDO at 46.

31 ⁷⁴ Record at 636.

32 ⁷⁵ Id.

⁷⁶ DCC's Objections, at 2.

⁷⁷ Futurewise Objections at 16.

1 The Board finds that while the County's use of "prior to or as of July 1, 1990" language in its
2 code is not compliant with the GMA, there is no evidence that the County based the LOB for
3 this LAMIRD on inappropriate criteria. Therefore, the Board concludes that the County has
4 brought this LAMIRD into compliance.

6 17. Crescent Beach

7 The Board noted that within the Crescent Beach LAMIRD the RNC zoning allows for more
8 than tourist-related uses and was therefore noncompliant with the GMA.⁷⁸ Futurewise
9 argues that the rezoning and shrinking of LAMIRD boundaries resulted in a GMA
10 compliant LAMIRD, and it has no objection to a finding of compliance.⁷⁹ The Board
11 concurs that this action by the County brings this LAMIRD into compliance with the GMA.
12

14 18. Lyre River

15 The Board found in the FDO that the RNC zoning for this area allowed for uses not
16 allowed in Type 2 LAMIRDs. The County no longer designates this area as a LAMIRD.
17 On this basis Futurewise no longer has an objection to a finding of compliance.⁸⁰ The
18 Board concurs that this action by the County brings this LAMIRD into compliance with the
19 GMA.
20

22 19. Bullman

23 The Board found that "while the existing subdivision and commercial uses would qualify as a
24 LAMIRD, the addition of large areas of vacant land does not comply with RCW
25 36.70A.070(5)(d)(iv)."⁸¹ The County adopted a compliance strategy by redrawing the LOB
26 to include only the Bullman Beach development. Futurewise has no objection to a finding of
27
28
29

30 ⁷⁸ FDO at 49.

31 ⁷⁹ Futurewise Objections at 17.

32 ⁸⁰ Id.

⁸¹ FDO at 51.

1 compliance regarding this area.⁸² The Board concurs that this action by the County brings
2 this LAMIRD into compliance with the GMA.

3
4 20. Snider

5 The Board found that the Snyder LAMIRD's boundaries were drawn to include large areas
6 of outfill that did not comply with RCW 36.70A.070(5)(d)(iv).⁸³ The County sought
7 compliance by adjusting the LOB to exclude and downzone certain properties.⁸⁴ On this
8 basis Futurewise has no objection to a finding of compliance.⁸⁵ The Board concurs that this
9 action by the County brings this LAMIRD into compliance with the GMA
10

11 **Conclusion:** For the reasons stated above, the Dryke-Sherbourne, Laird's Corner East,
12 Deer Park, and Lake Farm LAMIRDs remain non-compliant with the GMA. However, by its
13 recent amendments, the County has cured the basis for GMA non-compliance identified by
14 the Board for the remaining LAMIRDs.
15

16
17 C. Rural Densities (FDO Issue 8)

18 The County seeks a rescission of invalidity as to certain portions of Issue 8. The Board has
19 earlier extended compliance as to this issue, but the County maintains that rescission is
20 warranted as to those lands removed from both the LAMIRD and R1/RW1 designations
21 because the County took action to clarify that R1/RW1 lands are confined to LAMIRD zones
22 within the various planning regions identified by Futurewise and the R1/RW1 lands removed
23 or excluded from the noncompliant LAMIRDs were rezoned under compliant rural zoning.⁸⁶
24
25
26
27
28

29 ⁸² Futurewise Objections at 18.

30 ⁸³ FDO at 52.

31 ⁸⁴ Index #129 at. 29.

32 ⁸⁵ Futurewise Objections at 18.

⁸⁶ County Compliance Report at 7.

1 Futurewise has no objection to a finding of compliance and lifting of invalidity as to the
2 specific rezoning, re-designations, removals and exclusions set forth in the County's
3 Compliance Report.⁸⁷

4
5 The Board concurs with the County and Futurewise that the rescission of invalidity is
6 warranted on those lands removed from both the LAMIRD and R1/RW1 designations as they
7 no longer substantially interfere with the goals of the GMA.

8
9 **Conclusion:** The Board rescinds its determination of invalidity as to lands removed from
10 both the LAMIRD and R1/RW1 designations as they no longer substantially interfere with
11 the goals of the GMA.

12
13 D. Urban Densities In Sequim and Port Angeles (FDO Issue 12)

14 At the original hearing on the merits Futurewise challenged the County's minimum density
15 requirements in UGAs and outside critical areas. The Board found the zoning districts within
16 the Sequim and Port Angeles UGAs to be in violation of RCW 36.70A.110(3), and to
17 substantially interfere with RCW 36.70A.020(1) and (2). Futurewise now argues that the
18 County failed to cite any specific action taken regarding the three zoning densities found to
19 be noncompliant and invalid. Futurewise further argues that the County has failed to carry
20 its burden of proof in this regard.⁸⁸

21
22
23 Futurewise notes that the County did not amend the URH zone, in CCC 33.13.010, which
24 allows densities of one dwelling unit per 12,500 square feet in the UGA, nor the URL zone,
25 in CCC 33.12.020, which allows densities of one dwelling unit per 21,500 square feet in the
26 UGA.⁸⁹ However, Futurewise notes that it appears the S(R-I) zoning designations previously
27
28
29

30
31 ⁸⁷ Futurewise Objections at 21.

32 ⁸⁸ Id at 19.

⁸⁹ Id.

1 present in the Sequim UGA have been rezoned to S(R-II) and therefore does not object to a
2 finding of compliance for that zone.

3
4 In response, the County argues that the UGA-zoning issue became convoluted “ as to
5 ‘what’ Futurewise addressed in its briefing and to ‘what’ part of County code Futurewise
6 objected .⁹⁰ Ultimately, the County concluded that only Sequim UGA zoning, official maps
7 and plan policies contained low-density zoning deemed to violate the GMA, not the Port
8 Angeles UGA.⁹¹ The County asserts that it made the necessary amendments in response
9 to the FDO and that, therefore, the County should be found in compliance and invalidity
10 lifted.
11

12
13 It appears the S(R-I) zoning designations previously present in the Sequim UGA have been
14 rezoned to S(R-II), a zone that has not been before the Board for evaluation and therefore is
15 deemed compliant. For that reason, the Board finds the County’s amendment no longer
16 substantially interferes with the goals of the GMA and is compliant.
17

18 As to the URH and URL zones, the County argues that these do not appear in the Port
19 Angeles UGA. There has been no evidence introduced to the contrary, and therefore
20 there is no basis to find that these zones substantially interfere with the goals of the GMA
21 within the Port Angeles UGA.
22

23 The burden was also on County to demonstrate that it has addressed the URL and URH
24 zones in the Sequim UGA. The County notes that it was unable to identify non-compliant
25 urban zoning districts, comprehensive plan policies or map designations within the Sequim
26 UGA.⁹² Absent any evidence to the contrary, the County has carried its burden of proof in
27 this regard and the finding of non-compliance and invalidity is lifted.
28
29

30
31 ⁹⁰ County Response to Objections at 9.

⁹¹ Id.

32 ⁹² County Response to Objections at 9, fn. 8.

1 **Conclusion:** The S(R-I) zoning designations previously present in the Sequim UGA have
2 been rezoned to S(R-II) and therefore the Board finds compliance for that zone and that this
3 zone no longer substantially interferes with the goals of the GMA. As to the URH and URL
4 zones, there is no basis to find that these zones substantially interfere with the goals of the
5 GMA within the Port Angeles UGA. In addition, the County has carried its burden to
6 demonstrate that it has addressed the URH and URL zones in the Sequim UGA and the
7 finding of non-compliance and invalidity are lifted in that regard.
8
9

10 E. Urban Facilities and Services within the UGA (FDO Issue 13)

11 By Order of November 7, 2008 the Board extended compliance on this issue for one year.
12

13 F. Sequim-Dungeness Regional Plan (FDO Issue 15)

14 In the April 23, 2008 FDO the Board held that:
15

16 "Except as applied to Blyn, the provisions of CCC 31.03.270 regarding the Rural
17 Center zone comply with the GMA. As to Blyn, it has not been designated as a UGA
18 or a LAMIRD and therefore the allowance of urban uses or more intense rural uses
19 violates RCW 36.70A.070 (5)(d), RCW 36.70A.110 and RCW 36.70A.020 (1) and (2)
20 and is clearly erroneous."⁹³

21 In response, the County adjusted the definitions in CCC 33.15.040, rezoned much of the
22 area at issue and established the Blyn LAMIRD.⁹⁴ Rural Center zoning was retained north of
23 Highway 101 and became the LAMIRD, while the area south of Highway 101 was rezoned
24 to R5. With these changes, Futurewise has no objection to a finding of compliance and
25 lifting of invalidity as to this issue.⁹⁵
26

27 With the establishment of the Blyn LAMIRD, the County has brought its zoning into
28 compliance with the GMA. However, as noted above, the use of the language "prior to or as
29

30
31 ⁹³ FDO at 90.

32 ⁹⁴ Index #126.

⁹⁵ Futurewise Objections at 21.

1 of July 1, 1990", as found in CCC 33.15.040 for Rural Center zoning, does not comply with
2 the GMA. Consequently, we find this LAMIRD compliant only in the absence of such
3 language.

4
5 **Conclusion:** With the establishment of the Blyn LAMIRD, the County has brought its
6 zoning into compliance with the GMA. However, the language "prior to or as of July 1,
7 1990", as found in CCC 33.15.040 for Rural Center zoning is not compliant with the GMA.
8 The Board rescinds its finding of invalidity as to this area.
9

10 **VII. FINDINGS OF FACT**

- 11 1. Clallam County is a county located west of the crest of the Cascade Mountains that is
12 required to plan pursuant to RCW 36.76A.040.
- 13 2. On August 28, 2007 Clallam County adopted Ordinance 827, amending Clallam County
14 Code, Chapter 31.02 to add a new section to formally identify certain local land areas as
15 limited areas of more intensive rural development (LAMIRDs).
- 16 3. Petitions for Review in this case were filed by Petitioner Futurewise on October 3, 2007
17 and by Petitioner Dry Creek Coalition on October 26, 2007.
- 18 4. The matter came before the Board at a Hearing on the Merits of the Petition on March
19 11, 2008.
- 20 5. On April 23, 2008 this Board issued its Final Decision and Order and the Findings of
21 Fact from that Order are incorporated herein.
- 22 6. On June 9, 2008 the Board issued an Order on Reconsideration and the Findings of
23 Fact from that Order are incorporated herein.
- 24 7. On November 7, 2008 the Board granted a motion to allow the County an additional 90
25 days to achieve compliance on the issue of rural densities in Clallam County (setting a
26 new compliance date of January 23, 2009) and granted an additional one year to
27 achieve compliance regarding capital facilities planning for the Carlsborg non-municipal
28 UGA (setting a new compliance date of October 23, 2009).
- 29
30
31
32

- 1 8. The County has added provisions to CCC 33.15.050 et seq. to require that the uses be
2 "of such type, scale, size or intensity [as] already existed prior to or as of July 1, 1990.
3 Conditional uses must now meet the character of the neighborhood "as of July 1, 1990"
4 and there is a performance standard that "Allowed and conditional uses must be similar
5 to the use, scale, size, or intensity of the uses that existed in the area prior to or as of
6 July 1, 1990." Similarly, heights are limited to those that existed prior to or as of July 1,
7 1990 except as necessary to comply with federal and State pollution control
8 requirements. The County's conditional use process in CCC 33.27 provides that the
9 County Hearing Examiner may approve an application for a conditional use if, *inter alia*,
10 the proposed action is consistent with the spirit and intent of the Clallam County
11 Comprehensive Plan, and the proposed action is consistent with Title 33.
12
13 9. The phrase "the character of the neighborhood" is not new language in the Clallam
14 County Code, and such language was not the subject of a finding of non-compliance in
15 the FDO.
16
17 10. The Board earlier found that the SW Carlsborg LAMIRD did not comply with the GMA
18 designation criteria. In response the County down-zoned the entire LAMIRD to R5
19 zoning.
20
21 11. In the FDO the Board found that the County included undeveloped but
22 platted/subdivided lands within the LOB for Dungeness Village LAMIRD thereby
23 creating an irregular boundary that did not adhere to a defined physical boundary and
24 did not comply with the designation criteria set forth in the GMA. In response, the
25 County adopted a compliance strategy of adjusting the LOB to exclude and downzone
26 certain properties. The County drew the new LOB in the southern portion of this
27 LAMIRD around a historic built environment that developed around the intersections of
28 three major, pre-1990's public roads: Sequim Dungeness Way, Towne Road, and E.
29 Anderson Road. As the southern portion contained development at lower densities than
30 other portions of the LAMIRD, the County rezoned this portion of the LAMIRD from RV
31
32

1 to RV2. The County also relied on the presence of homes dating from the 1800's, early
2 1900s and mid-1900's as a basis for the LOB.

3 12. In the FDO, in regard to the East Anderson LAMIRD, the Board held that because the
4 County included undeveloped but platted/subdivided lands south of East Anderson
5 Road within the LOB, it created an irregular LOB for this LAMIRD that did not adhere
6 to a defined physical boundary. In response, the County excluded and down-zoned to
7 R5 the portion of the LAMIRD south of East Anderson Road and the parcels north of
8 East Anderson Road.
9

10 13. The County adjusted the LOB for the Lotzgesell Road LAMIRD to form two smaller
11 LAMIRDs both of which remain zoned R1. As a result this LAMIRD became the
12 Dungeness Bay LAMIRD to the northeast and Kitchen Dick LAMIRD to the Southwest.
13

14 14. With regard to the Dryke-Sherbourne LAMIRD some of the vacant land from the
15 Western portion of the LAMIRD has been deleted. There is no evidence in the record to
16 demonstrate that the retained area to the southeast of the eastern portion of this
17 LAMIRD contained qualifying development in 1990.

18 15. With regard to the Eastern portion of Dryke-Sherbourne, the area is bounded by
19 Highway 101 to the north, a septic system business to the east, an RV park to the south
20 and a lumberyard to the south. A 7.33 acre parcel now operated as an RV park has
21 had commercial activity since 1988. A 6 acre parcel to the east, now operated as
22 Peninsula Septic Tanks, has been the site of commercial activity since the 1970s. Of
23 the four parcels between the RV Park and Highway 101, the site is surrounded on three
24 sides by commercial uses and will be further reduced by the future widening of Highway
25 101.
26

27 16. With regard to Laird's Corner West LAMIRD, the Clallam Log Yard was established as
28 of July 1, 1990 as an industrial/commercial use in this area. There is no evidence that
29 prior use of the property north of Granite Road had been abandoned as of the date of
30 the 1990 aerial photograph. Evidence of the built environment is present in the 1990
31
32

1 photograph. The existence of the fire station and PUD structures to the south of the log
2 yard site warrant inclusion of the area.

3 17. With regard to Parcel 11 of Laird's West, there is little evidence of the built environment
4 on this parcel as of July 1, 1990 aside from a single family home. Highway 101 forms a
5 boundary to the west of this property.

6
7 18. With regard to Laird's Corner East LAMIRD, 1990 aerial photographs show logging
8 operations on the Corey and Sons Lumber Mill and the Merrill & Ring Log Yard. These
9 photographs demonstrate that commercial and industrial uses had been established on
10 the property as of 1990 including office buildings, saw facilities, buildings and log
11 storage on the Merrill & Ring properties, and shop buildings and mill facilities on the
12 Corey and Sons Lumber Mill site.

13 19. The Allen property, in the northeastern corner of Laird's LAMIRD East was operated
14 as an auto wrecking yard from 1978 to 1994.

15 20. There is no evidence of the built environment on the Peninsula Timber Company
16 property.

17
18 21. The County's sole basis for including the ten acre parcel in the northwest corner of the
19 Merrill & Ring property within the Laird's LAMIRD East LOB is that "While appearing
20 empty, . . . [it] has been consistently included and transferred as part of this site's
21 ownership . . . [and has been] considered as part of the mill site." There is no evidence
22 that this ten acre parcel was characterized by the built environment on July 1, 1990, or
23 any showing that its inclusion met the consideration for drawing a LOB set forth in RCW
24 36.70A.070 (d)(iv). Its inclusion within the LOB was clearly erroneous.

25 22. The County redrew the Deer Park LAMIRD LOB to exclude several of the larger
26 parcels to the north and south of Highway 101.

27
28 23. South of Highway 101, the parcels in the area west of Old Deer Park Road were part of
29 a previous mining operation, which include a home and a PUD station. This area
30 included major power lines, the PUD sub-station and power facility, a theatre and
31 steakhouse.
32

- 1 24. With regard to the Deer Park Commercial Center, this area included a 7-lot short plat
2 from 1999 entitled "Deer Park Commercial Center".
- 3 25. With regard to the SE corner of the LAMIRD, that property referred to in the briefing as
4 NP-1 and NP-2, the County excluded most of NP-2, and included NP-1. The record
5 reflects that Easy Street, bordering NP-1 on the west, had full infrastructure in 1990
6 including an 8 inch water main, fire hydrants, and commercial power.
- 7
8 26. However, with regard to the Port Angeles Gun Club property, there is no evidence of
9 1990 built environment nor other justification for extending the LOB across Highway 101
10 to include this property. With the removal of the other properties north of Highway 101
11 from this LAMIRD, Highway 101 would appear to form a more likely northern boundary
12 for the LAMIRD.
- 13 27. The County redrew the Lake Farm LAMIRD LOB to exclude platted but undeveloped
14 parcels from the LAMIRD, removing them from the northwest and southeast corners.
15 The County left in large areas in the western portion of the Lake Farm LAMIRD which
16 the 1990 aerial photograph shows was undeveloped.
- 17
18 28. The County adjusted the Bear Creek LAMIRD LOB to exclude and downzone certain
19 properties. The County reduced the size of the LAMIRD back below Highway 101.
- 20 29. With regard to the Whitcomb/Dimmel LAMIRD, the County adopted a compliance
21 strategy of adjusting the LOB and downzoning the excluded portions.
- 22
23 30. The County has removed those areas from the Bogachiel Bridge LAMIRD previously
24 found to be non-compliant.
- 25 31. In the FDO the Board noted that aside from three tourist commercial uses at the north
26 part of the intersection of La Push and Mora Road, and the Quillayute River Resort, the
27 balance of the land in the Three Rivers LAMIRD is either vacant, large lot residential
28 development, or a Washington State Department of Fish and Wildlife park and boat
29 launch and does not qualify for inclusion in the LAMIRD. In response, the County
30 adjusted the LOB and rezoned the excluded areas.
- 31
32

- 1 32. In the FDO the Board found that aside from the area to the east of Richwine Road,
2 which appears to have been clearly identifiable and contained and possesses a logical
3 boundary delineated predominately by the built environment, the remainder of the
4 Quillayute River LAMIRD did not qualify as a LAMIRD. This LAMIRD has been reduced
5 substantially in size.
6
7 33. The County has chosen to delete the Quillayute Prairie LAMIRD.
8 34. The 1990 aerial photograph showed little development in the Little Quillayute Prairie
9 LAMIRD. The County adopted a compliance strategy of downzoning the area to RW5
10 zoning.
11 35. While the County's use of "prior to or as of July 1, 1990" language in its code is not
12 compliant with the GMA, there is no evidence that the County based the LOB for the
13 O'Brien LAMIRD on inappropriate criteria.
14 36. The County has rezoned the Crescent Beach LAMIRD and reduced its boundaries.
15 37. The County no longer designates Lyre River area as a LAMIRD.
16 38. The County adopted a compliance strategy by redrawing the Bullman LOB to include
17 only the Bullman Beach development.
18 39. The County has adjusted the Snider LOB to exclude and downzone certain properties
19 within it.
20
21 40. The County took action to clarify that R1/RW1 lands are confined to LAMIRD zones
22 within the various planning regions identified by Futurewise and the R1/RW1 lands
23 removed or excluded from the noncompliant LAMIRDs were rezoned under compliant
24 rural zoning.
25
26 41. The S(R-I) zoning designations previously present in the Sequim UGA have been
27 rezoned to S(R-II), a zone that has not been before the Board for review. The URH and
28 URL zones do not appear in the Port Angeles UGA.
29
30 42. The County adjusted the definitions in CCC 33.15.040, rezoned much of the area at
31 issue and established the Blyn LAMIRD. Rural Center zoning was retained north of
32

1 Highway 101 and became the LAMIRD, while the area south of Highway 101 was
2 rezoned to R5.

3 43. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.
4

5 **VIII. CONCLUSIONS OF LAW**

- 6 A. The Board has jurisdiction over the parties and subject matter.
7 B. Petitioners have standing to challenge issues it briefed for this compliance proceeding.
8 C. The phrase "character of the existing neighborhood" is not before the Board for review in
9 this compliance proceedings.
10 D. The County has failed to address the following area of non-compliance identified by the
11 Board, that the County comply with the size, scale, use and intensity requirements of
12 RCW 36.70A.070(5)(d)(i)(c) in the RNC and RLC zones and not allow a broader range
13 of uses than existed "as of July 1, 1990."
14 E. The phrase "the uses that existed in the area *prior to* or as of July 1, 1990" in describing
15 the reference point for allowed and conditional uses is not consistent with RCW
16 36.70A.070(5)(d)(v) which provides that "For purposes of (d) of this subsection, an
17 existing area or existing use is one that was in existence: (A) On July 1, 1990, in a
18 county that was initially required to plan under all of the provisions of this chapter".
19 F. The phrase "prior to or as of July 1, 1990" would allow consideration of past uses that
20 were not only not in operation on July 1, 1990, but of which there was no remaining
21 evidence. This is inconsistent with the language of RCW 36.70A.070(5)(d)(v) and is
22 clearly erroneous.
23 G. While the County may properly limit conditional uses in a LAMIRD based upon "type,
24 scale, size, use or intensity" without numerical standards as to those dimensions, the
25 character of the existing area with which it must be consistent is the character of the
26 existing area "on July 1, 1990" as provided by the GMA. Therefore, the County's use of
27 the phrase "prior to or as of July 1, 1990" is not consistent with RCW 36.70A.070(5)(d).
28
29
30
31
32

- 1 H. By downzoning the entire SW Carlsborg LAMIRD to R5 zoning the County has brought
2 this LAMIRD into compliance with the GMA.
- 3 I. The County's decision in drawing the Dungeness Village LAMIRD LOB was a
4 reasonable choice and not clearly erroneous. The Board finds the Dungeness Village
5 LAMIRD is now compliant with the GMA.
- 6 J. The County has brought the East Anderson LAMIRD into compliance with the GMA.
- 7 K. The County has brought the Lotzgesell Road LAMIRD into compliance with the GMA.
- 8 L. In the absence of any evidence of 1990 qualifying development, the inclusion of the
9 southeastern portion of Dryke-West was clearly erroneous.
- 10 M. The County's LOB for the eastern portion of the Dryke-Sherbourne LAMIRD is not clearly
11 erroneous.
- 12 N. The Lairds' Corner West LAMIRD LOB north of Granite Road was based on sufficient
13 evidence of the July 1, 1990 built environment.
- 14 O. The County's rationale for using Highway 112 as part of the Laird's West LOB was
15 reasonable and thus including parcel 11 as infill was not clearly erroneous.
- 16 P. The evidence presented by the County does not support the inclusion of the Peninsula
17 Timber Company property within the LOB for Laird's East, and its inclusion in the
18 LAMIRD was clearly erroneous.
- 19 Q. With the exception of the 10 acre northwestern portion of the Merrill & Ring site, and the
20 Peninsula Timber Company property, Laird's LAMIRD East is compliant with the GMA.
- 21 R. Petitioners have not demonstrated that, in relation to the remainder of the LAMIRD, the
22 inclusion of Deer Park Commercial Center in the Deer Park LAMIRD was clearly
23 erroneous and not necessary to maintain a Logical Outer Boundary.
- 24 S. The level of July 1, 1990 development supported the inclusion of parcel NP-1 within the
25 Deer Park LOB.
- 26 T. There is no evidence of 1990 built environment nor other justification for extending the
27 LOB across Highway 101 to include the Port Angeles Gun Club property. Its inclusion
28 within the LOB was clearly erroneous.
- 29
30
31
32

- 1 U. The Lake Farm LAMIRD remains non-compliant with RCW 36.70A.070(5)(d).
2 V. The Bear Creek LAMIRD is now compliant with RCW 36.70A.070(5)(d).
3 W. The Whitcomb/Dimmel LAMIRD is now compliant with RCW 36.70A.070(5)(d).
4 X. The Bogachiel Bridge LAMIRD is now compliant with RCW 36.70A.070(5)(d).
5 Y. The Three Rivers LAMIRD is now compliant with RCW 36.70A.070(5)(d).
6 Z. The Quillayute River LAMIRD is now compliant with RCW 36.70A.070(5)(d).
7
8 AA. The Quillayute Prairie LAMIRD has been removed, curing the earlier basis for a
9 finding of noncompliance with the GMA.
10 BB. The Little Quillayute Prairie LAMIRD is now compliant with RCW 36.70A.070(5)(d).
11 CC. The O'Brien LAMIRD is now compliant with RCW 36.70A.070(5)(d).
12 DD. The Crescent Beach LAMIRD is now compliant with RCW 36.70A.070(5)(d).
13 EE. The County has de-designated the Lyre River LAMIRD and this area is now
14 compliant with RCW 36.70A.070(5)(d).
15
16 FF. The Bullman LAMIRD is now compliant with RCW 36.70A.070(5)(d).
17 GG. The Snider LAMIRD is now compliant with RCW 36.70A.070(5)(d).
18 HH. A rescission of invalidity is warranted on those lands removed from both the
19 LAMIRDs and R1/RW1 designations as they no longer substantially interfere with the
20 goals of the GMA.
21 II. The S(R-I) zoning designations previously present in the Sequim UGA have been
22 rezoned to S(R-II), a zone not previously before that Board for compliance. For that
23 reason, the Board finds compliance in regard to rezoning the S(R-1) to S(R-2).
24 Removal of the S(R-1) designation cures substantial interference with the goals of the
25 GMA for zoning in the Sequim UGA.
26
27 JJ. As to the URH and URL zones, there is no basis to find that these zones substantially
28 interfere with the goals of the GMA within the Port Angeles UGA.
29
30 KK. The County has carried its burden to demonstrate that it has addressed the URH and
31 URL zones in the Sequim UGA and the finding of non-compliance and invalidity are
32 lifted in that regard.

1 LL. With the establishment of the Blyn LAMIRD, the County has brought its zoning into
2 compliance with the GMA. However, the language "prior to or as of July 1, 1990", as
3 found in CCC 33.15.040 for Rural Center zoning is not compliant with the GMA. The
4 Board rescinds its finding of invalidity as to this area.

5 MM. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.
6

7 IX. ORDER

8 Based on the foregoing, Clallam County is ordered to bring its Comprehensive Plans and
9 development regulations into compliance with the Growth Management Act within 180 days.
10 Compliance shall be due no later than July 30, 2009. The following schedule for
11 compliance, briefing and hearing shall apply:
12

Item	Date Due
Compliance Due on identified areas of noncompliance	July 30, 2009
Compliance Report and Index to Compliance Record	August 6, 2009
Objections to a Finding of Compliance	August 27, 2009
Response to Objections	September 3, 2009
Compliance Hearing	September 10, 2009

13
14
15
16
17
18
19 Entered this 30thday of January 2009.
20

21
22 _____
James McNamara, Board Member

23
24 _____
William Roehl, Board Member
25

26 Concurring Opinion:
27

28 I concur with my colleagues in the finding and conclusions in this order. I write separately to
29 clarify several of these findings. The first is that the change in zoning in the Sequim UGA
30 from S(R-I) to S(R-II) complies with the GMA. The S(R-2) zone allows:
31
32

1 The S(R-II) zone establishes areas of low intensity urban residential
2 development consisting primarily of single-family detached residences up to one
3 dwelling unit to one acre without required urban level facilities and services and
4 up to five (5) dwelling units per acre with transfer of development rights and
5 provision of urban facilities and services. The S(R-II) zone provides for
6 consistency and predictability of established single-family neighborhoods.⁹⁶

7 In our past decisions, the Board has not considered the density in this zone appropriate
8 before urban services can be delivered. Densities at this level generally prevent future
9 urban densities and make it difficult to place future urban services.⁹⁷ A much better
10 approach to ensuring future urban densities and urban services are the approaches of
11 keeping densities at rural levels until services can be delivered as Mason County has
12 established for the Belfair UGA and Skagit County has instituted in the Bayview Ridge
13 UGA.⁹⁸

14
15 In the situation here, the S(R-II) zone was not challenged by Futurewise, and therefore not
16 before the Board for review⁹⁹. Therefore, without a challenge, this zone was deemed
17 compliant because the Board has no authority to review items not brought to it in a Petition
18 for Review. When Clallam County rezoned areas previously zoned S(R-I) to S(R-II), the
19 Board had no basis to rule the S(R-II) noncompliant.

20
21 I also share Petitioner Dry Creek's concern in allowing the County to base the allowance of
22 new uses in LAMIRDS to be based on the language "such type, scale, size, and intensity"
23 without numerical standards will be hard to enforce. I realize that with the numerous
24 LAMIRDS that Clallam County has designated, it would be hard to develop a standard. The
25

26
27
28 ⁹⁶ CCC 33.19.030(2).

29 ⁹⁷ See *Advocates for Responsible Development v. Mason County*, WWGMB 06-2-005(Compliance Order on
30 Comprehensive Plan and Development Regulations November 14, 2007).

31 ⁹⁸ See *Advocates for Responsible Development v. Mason County*, WWGMHB Case No. 06-2-0005
(Compliance Order, Stormwater and Sewers, December 9, 2008) and *Friends of Skagit County v. Skagit*
32 *County*, WWGMHB 07-2-0002 and *Abenroth v. Skagit County*, WWGMHB Case No.97-2-0060c (Compliance
Order, December 23, 2008).

⁹⁹ See Final Decision and Order at 68-71.

1 reason that I joined with my colleagues in finding the lack of numerical standards was not
2 clearly erroneous is that the provisions of CCC 26.04.060(1) require a Hearings Examiner to
3 make findings for conditional uses that the proposed action is consistent with the spirit and
4 intent of the Clallam County Comprehensive Plan and proposed action is consistent with
5 land uses within the zoning district in which it is located and in the vicinity of the subject
6 property.
7

8
9
10

Holly Gadbow, Board Member

11 Pursuant to RCW 36.70A.300 this is a final order of the Board.

12
13 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date
14 of mailing of this Order to file a petition for reconsideration. The original and three
15 copies of a motion for reconsideration, together with any argument in support
16 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the
17 original and three copies of the motion for reconsideration directly to the Board, with
18 a copy to all other parties of record. **Filing means actual receipt of the document at**
19 **the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing
of a motion for reconsideration is not a prerequisite for filing a petition for judicial
review.

20
21 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
22 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
23 judicial review may be instituted by filing a petition in superior court according to the
24 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
25 Enforcement. The petition for judicial review of this Order shall be filed with the
26 appropriate court and served on the Board, the Office of the Attorney General, and all
27 parties within thirty days after service of the final order, as provided in RCW
28 34.05.542. Service on the Board may be accomplished in person or by mail, but
service on the Board means **actual receipt of the document at the Board office** within
thirty days after service of the final order. A petition for judicial review may not be
served on the Board by fax or by electronic mail.

29
30 **Service.** This Order was served on you the day it was deposited in the United States
31 mail. RCW 34.05.010(19).
32